

Application Serial No. 10/522,322
Reply to Office Action of October 26, 2009

PATENT
Docket: CU-4060

REMARKS

In the Office Action, dated October 26, 2009, the Examiner states that Claims 33-63 are pending and rejected. By the present Amendment, Applicant amends the claims.

Rejections under 35 U.S.C. §103(a)

Claims 33-52 and 57-60 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kirschner et al. (US 6,352,713) in view of Zhao (US 2002/0132037). Claims 53-56 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kirschner in view of Zhao and Bell et al. (US 5,338,809). Claims 61-63 are rejected under 35 U.S.C. §103(a) as being unpatentable over Oppenheimer et al. (US 4,980,169) in view of Kirschner and Zhao. Applicant respectfully disagrees with and traverses these rejections.

Applicant respectfully asserts that Kirschner teaches chewable prenatal nutrition supplements containing vitamin C and, optionally, folic acid, minerals, other vitamins and/or additives, these supplements being substantially non-acidic (calcium carbonate, see Examples I-IV) and, therefore, providing vitamin C in adequate levels for pregnant women while minimizing or eliminating gastric upset, dyspepsia and/or tooth enamel erosion (see "field of the invention" in Column 1). Kirschner's product may also include, inter alia, herbal derivatives, plant derivatives, photo-chemical derivatives or combinations thereof, the list of herbals and herbal derivative being extensive and indeed include, among very many others, peppermint, sage, thyme and yarrow. Kirschner's product may, in addition, also include "various additives", inter alia, sweetening agents such as water-soluble sweetening agents, water-soluble artificial sweeteners, and dipeptide-based sweeteners, preferably glycyrrizin or salts thereof.

Zhou teaches a herbal sweetener composition which is low in calories and ideal for use as a substitute for refined sugar or sucrose (0001), that composition comprising a naturally occurring sugar selected from glucose, fructose, maltose and mixtures thereof and a terpene glycoside (0011), said terpene glycoside including extracts from various edible botanicals or herbs, inter alia, *Stevia rebaudiana*. In Zhou's products the ratio between naturally occurring sugars and terpene glycoside is ideally about 25:1 (0017), thus Zhou's product contains, as its main components, naturally occurring sugars.

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As mentioned above, Kirchner's product comprises, as its main ingredients, vitamins C and calcium carbonate, and the herbals and herbal derivatives which it may also contain, as additives, in addition to folic acid and other vitamins, are present, if at all, only in rather small quantities. As also mentioned above, Zhou's product contains, as its main components, naturally occurring sugars, and terpene glycosides, such as extracts from herbs, inter alia, *Stevia rebaudiana*, which are present therein, in addition to the main ingredients, viz. certain naturally occurring sugars, in an amount which is ideally just 1/25 of the main ingredients. Thus, Applicant respectfully asserts that the combination of Kirchner and Zhou cannot render obvious the herbal confectionery article of the rejected claims.

With respect to the rejection of Claims 53-56, Applicant respectfully asserts that Bell teaches a chewing gum comprising a gum base, a flavoring component, and a pure sweetener (Stevioside is not a synthetic sweetener – it can be obtained by extraction of *Stevia rebaudiana*, followed by purification of the extract thus obtained), as opposed to the extract of *Stevia rebaudiana* which is present in the herbal confectionery articles of the present invention. Kirchner et al. and Zhou have been discussed hereinabove, and it has been asserted that their combination cannot render the herbal confectionery articles of the present invention obvious.

The flavorants contained in Bell's product include both natural and artificial flavors and mints as well as various fruit flavors, and its sweeteners include, among many others, "*Stevia rebaudiana* (Stevioside)". Bell's flavorants include just one of the four herbs of the herbal composition of the invention, viz. peppermint, but not the other three herbs, viz. sage, yarrow and thyme, and it is important to note that Bell is labeling the *Stevia rebaudiana* component which may be present as sweetener as "Stevioside", which any person skilled in the art considers as a pure sweetener (Stevioside is not a synthetic sweetener – it can be obtained by extraction of *Stevia rebaudiana*, followed by purification of the extract thus obtained), as opposed to the extract of *Stevia rebaudiana*.

Accordingly, Applicant respectfully asserts that the combination of Kirchner et al., Zhou and Bell cannot properly be deemed as rendering the herbal confectionery articles of the present invention obvious.

Finally, with respect to Claims 61-63, Applicant respectfully asserts that Oppenheimer teaches an improved confection composition containing a volatile oil,

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which enhances the organoleptic of said volatile oil in the oral cavity. The composition includes a volatile oil-modifying agent which ameliorates perceived undesirable organoleptic sensations, said modifying agent being preferably capsicum, most preferably capsicum in the oleoresin form, and being present in an amount of from about 1 to about ppm of the confection.

Oppenheimer's products contain flavoring components, including natural and synthetic flavoring liquids such as, among others, volatile oils, with peppermint oil, thyme oil and sage oil being, inter alia, mentioned in rather extensive list. These products may also contain sweeteners, the list of sweeteners including, among many others, "*Stevia rebaudiana* (Stevioside)".

As in Bell, Oppenheimer also labels the *Stevia rebaudiana* component which may be present as sweetener as "Stevioside", which any person skilled in the art considers as a pure sweetener (Stevioside is not a synthetic sweetener – it can be obtained by extraction of *Stevia rebaudiana*, followed by purification of the extract thus obtained), as opposed to the extract of *Stevia rebaudiana* which is present in the herbal confectionery articles of the present invention. Furthermore, Oppenheimer mentions, as flavoring components, inter alia, peppermint oil, thyme oil and sage oil, as opposed to the extracts of the herbs peppermint, thyme and sage.

Thus, Applicant respectfully asserts that neither Oppenheimer nor Kirschner nor Zhou, taken alone or in combination, should be considered to render obvious the herbal confectionery articles of the present invention.

Applicant respectfully asserts that all of the cited prior art references are drawn to products which are fundamentally different from those of the present invention. For example, Kirschner teaches chewable prenatal nutrition supplements containing vitamin C and, optionally, folic acid, minerals, other vitamins and/or additives; Zhou teaches an herbal sweetener composition which is low in calories and ideal for use as substitute for refined sugar or sucrose; Bell teaches chewing with flavorant(s) absorbed releasably on finely divided silica; and Oppenheimer teaches a composition containing a volatile oil and a volatile oil-modifying agent.

These references mention certain herbs and/or *Stevia rebaudiana*, mostly only parenthetically. Therefore, Applicant respectfully asserts that they offer no motivation or suggestion to a person skilled in the art to devise the herbal combination of the present invention. It is, thus, respectfully asserted that only

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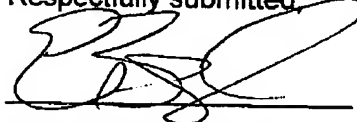
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having cognizance of the present invention, in an – impermissible – retrospective view and with the benefit of the invention, in an impermissible – retrospective view and with the benefit of invention, the person skilled in the art might have come to the idea that the references cited in the outstanding Office Action might be regarded as relevant. Accordingly, Applicant respectfully requests withdrawal of the present rejections under 35 U.S.C. §103(a).

In light of the foregoing response, all the outstanding objections and rejections are considered overcome. Applicant respectfully submits that this application should now be in condition for allowance and respectfully requests favorable consideration.

December 23, 2009
Date

Respectfully submitted,



Attorney for Applicant
Eric D. Babych
c/o Ladas & Parry LLP
224 South Michigan Avenue
Chicago, Illinois 60604
(312) 427-1300
Reg. No. 57,542